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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,237	06/26/2003	Thaddeus M. Jones	ETI0069.US	4775

7590 09/30/2004

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EXAMINER

BOLES, DEREK

ART UNIT PAPER NUMBER

3749

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,237

Applicant(s)

JONES, THADDEUS M.

Examiner

Derek S. Boles

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 26 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8, 9, 11, 12, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnsen (5,900,178). See col. 3, line 50 to col. 4, line 19, abstract and fig. 1 .

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim(s) 5, 6, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnsen in view of Sogo et al. (6,428,671). Johnsen discloses all of the limitations of the Claim(s) except for measuring current variations and creating a pattern to convey status information. Sogo et al. discloses the presence of a measuring current variations and creating a pattern to convey status information. See col. 28, lines 55-67 and col. 9, lines 16-43, respectively. Hence, one skilled in the art would find it obvious to modify the system of Johnsen to include the measurement of current variations and creating a pattern to convey status information of Sogo et al. for the purpose of providing a more precise controller.

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Claims 17, 19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnsen in view of official notice, in re Ahlert, 424 F.2d 1088, 165 USPQ 418, 420 (CCPA 1970). Johnsen discloses all of the limitations of the claims except for the controller detecting the startup of the heater, including the sub step of pulsing electrical power the electrical power conductor in an on and off pattern depending on the information and detecting the pattern in a conductor by an ampere meter. One skilled in the art would find it obvious to modify the heating system of Johnsen to include the controller detecting the startup of the heater, including the sub step of pulsing electrical power the electrical power conductor in an on and off pattern depending on the information and detecting the pattern in a conductor by an ampere meter. Regarding claims 7, 9 and 23, Johnsen discloses all of the limitations of the claims except for the predetermined time being thirty seconds and the predetermined temperature being approx. 380 F. However, since the applicant has failed to establish any criticality or synergistic results which are derived from the recited configurations, these limitations are considered a matter of obvious design choice. Thus, the applicant's design configurations would have been an obvious improvement to one of ordinary skill in the art with regard to the apparatus disclosed in Johnsen.

Regarding claim 15, Johnsen in view of Sogo et al. discloses all of the limitations of the claim except for the pattern lasting less than thirty seconds. However, since the applicant has failed to establish any criticality or synergistic results which are derived from the recited configurations, these limitations are considered a matter of obvious design choice. Thus, the applicant's design configurations would have been an obvious improvement to one of ordinary skill in the art with regard to the apparatus disclosed in Johnsen in view of Sogo et al.

Claim(s) 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnsen in

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view of official notice and in further view of Yamawaki et al. (3,909,601). Johnsen in view of official notice discloses all of the limitations of the claim(s) except for varying at least one of time duration and frequency of the pattern. Yamawaki et al. discloses the presence of varying at least one of time duration and frequency of the pattern. See Abstract. Hence, one skilled in the art would find it obvious to modify the system of Johnsen in view of official notice to include a varying at least one of time duration and frequency of the pattern of Yamawaki et al. for the purpose of providing a more precise controller.

Response to Arguments

Applicant's arguments filed 6/15/04 have been fully considered but they are not persuasive. In response to applicant's argument that his status information being directed to a heating element regardless of ambient temperature is an intended use of his invention that is clearly within the capabilities of the supplied prior art, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

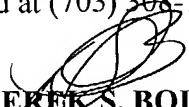
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derek S. Boles at (703) 308-1804 or fax number (703) 872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861. The Supervisory Primary Examiner for Art Unit 3749 is Ira Lazarus who can be reached at (703) 308-1935.

D.S.B.


DEREK S. BOLES
PRIMARY EXAMINER
GROUP 3700

9/23/04